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Paper No. 8

BAXTER HEALTHCARE CORPORATION
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IRVINE, CA 92614

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MAR 21 2002

OFFICE OF PETITIONS

In re Application of
Laemmle et al. :
Application No.: 09/833,328
Filed: April 12, 2001
Attorney Docket No.: R-247.00CIP
For: COMPOSITION EXHIBITING A VON
WILLEBRAND FACTION (vWF) PROTEASE
ACTIVITY COMPRISING A POLYPEPTIDE
CHAIN WITH THE AMINO ACID SEQUENCE
AAGGILHLELLV

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed December 24, 2001.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on April 12, 2001 without an executed oath or declaration. Accordingly, on June 22, 2001, a "Notice to File Missing Parts of Nonprovisional Application" (Notice) was mailed, requiring an executed oath or declaration, a surcharge for its late filing, and a paper copy and computer readable of applicants' Sequence Listing, as well as an amendment directing its entry into the application and a statement that the paper copy and the computer readable copy are identical.

In response, on December 24, 2001, a petition for a four month extension of time and required fee, a declaration executed by 9 of 10 joint inventors, the surcharge, the sequence listing submissions, and the instant petition were filed.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (1) above.

As to item (1), Applicants have failed to establish that the inventor has refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the non-signing inventors be provided

with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). The petition does not establish that a complete copy of the application was mailed to Ms. Tagliavacca's last known address. The petition mentions only "declarations and other formal documents to be signed" were sent to the inventors' last known addresses. Ms. Tagliavacca must have the complete application in her possession in order to make an informed decision as to whether she joins in its filing.

In addition, Ms. Tagliavacca's refusal is not apparent. Ms. Tagliavacca's e-Mail of December 18, 2001 intimates that she would be willing to join in the filing of the application. Petitioners should send a copy of the entire application as filed to Ms. Tagliavacca's last known address.

When petitioners can show that Ms. Tagliavacca was mailed or received the complete application and that she either refused to sign the declaration or would not respond to the request that she sign the declaration, petitioners will have satisfied this requirement.

Pursuant to petitioners' authorization, deposit account no. 02-1437 will be charged the \$130.00 petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
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Telephone inquiries should be directed to the undersigned at (703) 308-6712

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